



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

| | | |
|--------------------|---|--------------------|
| TOWN OF BELMONT | : | |
| | : | |
| | : | |
| Petitioner | : | |
| | : | |
| v. | : | CASE NO. A-0559:5 |
| | : | |
| AFSCME COUNCIL #93 | : | DECISION NO. 95-68 |
| | : | |
| Respondent | : | |
| | : | |

APPEARANCES

Representing Town of Belmont:

Robert R. Tawney, Chief Negotiator

Representing AFSCME, Council #93:

Harriett P. Spencer, Staff Representative

Also appearing:

Patricia Clifford
Frederick W. Welch, Town of Belmont

BACKGROUND

On March 22, 1995, the Town of Belmont filed a petition to modify the bargaining unit of town workers by deleting the selectmen's secretary/assessor's assistant position on the basis of confidentiality. RSA 273-A:1 IX (c). AFSCME, Council #93 objects to the proposed modification and, on that basis, the matter was heard before the undersigned hearing officer on June 28, 1995.

FINDINGS OF FACT

1. The Town of Belmont (Town) is a "public employer" within the meaning of RSA 273-A:1 X.

2. AFSCME, Council #93 (Association) became the certified bargaining agent representing the town employees bargaining unit in 1991. At the time, the unit consisted of "[a]ll full time patrolmen, dispatcher, Sr. firefighter/EMTD, deputy tax collector, assessor's assistant, accountant and building inspector/code enforcement officer." The only position excluded was that of the police chief's secretary on the basis of confidentiality.
3. A modification of the bargaining unit was the subject of a hearing which resulted in Decision No. 92-150 (October 29, 1992) eliminating the assessor's assistant title and adding the selectmen's secretary position.
4. One year after the modification, Patricia Clifford began in the Belmont Town Offices as a temporary worker. Then she became a permanent worker as the selectmen's secretary on November 1, 1993. She testified that she spends seventy-five percent of her time performing tasks related to assessment and the remainder of her time doing other work including secretarial work for the selectmen.
5. When she was hired, she was told that her's was a union position as is reflected in Ms. Clifford's testimony and Frederick Welch's memorandum on office reorganization written to the selectmen on March 23, 1992 (Association #3). The original job description (Association #2) given Patricia Clifford makes no reference to confidential duties. The later job description (Association #1) refers to confidential duties.
6. Town Administrator Frederick Welch kept minutes of selectmen's meetings until after the most recent election when the new Board of Selectmen informed Mr. Welch that they wished him free to more actively contribute to the meetings. Ms. Clifford was asked to attend Selectmen's meetings to take minutes as a temporary measure and she recalled that, on March 22, 1995, the hiring of a recording secretary was authorized. (Association #4) Mr. Welch testified that the part-time position was advertised but no applicant responded. The

minutes of the April 19, 1995, meeting reflect a shift toward requiring Patricia Clifford to assume the role of recording secretary in addition to her regular duties. (Association #6)

7. Ms. Clifford has been present to keep minutes at various times in 1994 and has continued to attend selectmen's meetings, most recently on June 15, 1995. During that time she was asked to transcribe minutes of only one non-public session having to do with union matters and attested she felt no conflict of interest. Confidential communications regarding negotiations have traditionally run between Mr. Welch and Mr. Tawney and Mr. Tawney and the Association with no involvement of a town clerical employee.

DECISION AND ORDER

RSA 273-A:8 reserves to the PELRB determination and certification of bargaining units. Regulation Pub 302.05 declares modification of a certified bargaining unit in order in cases of mistake or change in the circumstances surrounding the formation of a bargaining unit. In this case, a reorganization of the staff of the Belmont Town Offices occurred with a change in selectmen leading to the filing of this petition when it was decided that the position that performs secretarial work for the selectmen should be considered confidential.

While it is management's prerogative to direct and select its employees, it appears something beyond the bounds of ordinary business decisions has occurred here. The position held by Ms. Clifford since 1993 is a full-time position performed during the day for wages controlled by the collective bargaining agreement between the parties as it is a union position. Most of the work done by Ms. Clifford relates to assessing and some of her work is general secretarial work in nature despite the title of selectman's secretary given her job in late 1992. No one has testified that Ms. Clifford has been privy to labor negotiation proposals or related confidential matters while carrying out that original daytime job. However, when apparently brief efforts (See Finding No. 6) failed to fill the new part-time recording secretary position, Ms. Clifford was asked to take on that position in addition to her regular job. There was no testimony related to negotiations for changes in wages and benefits that might be due this union employee for additional work. Instead, testimony from Ms. Clifford revealed that she felt pressured to

resign from the Association and a desire to remain a part of the AFSCME bargaining unit.

The petition to modify the bargaining unit with the removal of this position is denied. No reason satisfying the regulation, Pub 302.05, has been given to open to modification this settled bargaining unit. The change claimed amounts to the grafting of a confidential part-time position to an essentially non-confidential full-time position against the will of the employee. It is a change sought imposed which is beyond the legislative mandate of RSA 273-A:8; not a change already accomplished.

The selectmen are correct in their belief that a non-union employee had best attend their meetings to record and transcribe matters dealing with sensitive labor relations. However, to avoid charges of unfair labor practices, another solution must be found such as the original plan to hire a part-time recording secretary.

So ordered

Signed this 17th day of August, 1995.



Gail Morrison
Hearing Officer